

**HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 249A.4 and 2001 Iowa Acts, chapter 192, section 4(6), the Department of Human Services amends Chapter 54, "Facility Participation," Iowa Administrative Code.

These amendments provide clarification of the treatment of related-party compensation in the setting of rates for residential care facilities (RCFs). The amendments also clarify the Department's treatment of legal, accounting, consulting, and other professional fees, including association dues, and penalties and fines. These amendments change which cost report is to be submitted, what is required to be submitted to the Department with the cost report, and how the cost report is to be submitted. The amendments also more clearly define the timing for submitting an amended cost report and clarify the Department's position on the penalty period for late submission of cost reports. The amendments also change language to reflect current operations of the Iowa Medicaid Enterprise.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 0790C** on June 12, 2013.

The Department received comments from two respondents on these amendments.

**Comment one:** The first comment received was a question and a request for an explanation of the amendments. The question was, "Does this rule making apply to privately owned for-profit facilities?" The respondent also wanted an explanation of new paragraph 54.3(11)"n" that was proposed for adoption in the amendments.

**Department response:** In response to the question, this rule making applies to any residential care facility (RCF) which receives reimbursement from Iowa Medicaid.

The amendment in Item 7 rescinds current paragraph 54.3(11)"n" and adopts a new paragraph in its place. Current paragraph 54.3(11)"n" allows a broad definition of allowable legal fees which may be included in the provider's rate. New paragraph "n" deals not only with legal fees, but with accounting, consulting, and other professional fees as well. The new paragraph sets out certain types of fees that are explicitly not allowed costs for Medicaid reimbursement, including lobbying fees and legal fees for administrative or judicial proceedings in which the facility does not prevail on the disputed issue.

**Comment two:** A residential care facility (RCF) cost report is filed for each RCF. If a provider operates more than one facility (which is very common), it files a separate cost report for each facility. Each cost report is done for that physical facility, not for the entire provider agency. Compilations, reviews, and audits are typically done for the entire provider agency, not by individual facility. Therefore, in most cases there is no compilation, review, or audit that covers only the facility on the cost report. Also, in many cases the compilation, review, or audit is not completed within three months after the end of the fiscal year, so it will be impossible to submit it with the cost report.

**Department response:** When a financial statement is still being prepared at the time a cost report is required to be submitted, there would be an expectation that the facility disclose the type of financial statement being prepared and an expected date it would be available. The Iowa Medicaid Enterprise provider cost audit and rate setting contractor will take that information into consideration during the review process. The expectation is that, once completed, the financial statement would be submitted.

There are entities that have an exception to policy to be able to file one report for all individual homes. While the Department understands that the financial reports do combine operations for several entities, there is information within a financial statement that will help the Iowa Medicaid Enterprise provider cost audit and rate setting contractor understand transactions.

**Comment three:** The proposed amendments would deny a provider the right to even request a review of a financial and statistical report after the facility is notified of its per diem rate. This unfairly denies the provider all rights to remedy an error no matter what the source of the problem.

**Department response:** A facility can notify the Department if a significant financial change related to a cost report has been submitted by the facility certifying that the information is correct; a review has

been completed, including correspondence between the Department and the provider; a payment rate has been calculated; and the appeal time frame has elapsed. The Department will consider factors including, but not limited to, the nature of the changes and the circumstances that led to the discovery of the issue to determine if a new review is warranted. Also, a provider will still have the ability to file an appeal of any final rate determinations made by the Department.

Due to the comments received by the Department and internal review, one change was made to the proposed amendments. In Item 7, the word “directly” was added in the first sentence of the introductory paragraph of 54.3(11)“n” to ensure clarity as follows: “Reasonable legal, accounting, consulting and other professional fees, including association dues, are allowable costs if the fees are directly related to patient care.”

The Council on Human Services adopted these amendments on August 14, 2013.

These amendments do not provide for waivers in specified situations because requests for the waiver of any rule may be submitted under the Department’s general rule on exceptions at 441—1.8(17A,217).

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code section 249A.4.

These amendments will become effective November 1, 2013.

The following amendments are adopted.

ITEM 1. Amend rule 441—54.1(249) as follows:

**441—54.1(249) Application and contract agreement.** Each facility desiring to participate in the state supplementary assistance program must enter into a contract with the department of human services and agree to the provisions as enumerated in Form ~~PA-1108-6~~ 470-0443, Application and Contract Agreement for Residential Care Facilities. The effective date of the contract shall be the first of the month that the Application and Contract Agreement for Residential Care Facilities, signed by the administrator of the facility, is received by the department. No payment shall be made for care provided before the effective date of the contract. The contract shall be in effect until the department ceases to participate in the program, until either party gives 60 days’ notice of termination in writing to the other party, or until there is a change in ownership. The facility shall notify the department within 30 days of a change in ownership, a change in the number of beds or a change in administrator.

This rule is intended to implement Iowa Code section 249.12.

ITEM 2. Amend rule 441—54.2(249) as follows:

**441—54.2(249) Maintenance of case records.** A facility must maintain a case folder for each individual residing in the facility which contains the following:

1. Contract between the facility and the resident on Form ~~PA-2365-6~~ 470-0477, RCF Admission Agreement.

2. Physician’s statement certifying that the resident does not require nursing services.

3. Proof of expenditures from resident’s “personal needs” allowance.

This rule is intended to implement Iowa Code section 249.12.

ITEM 3. Amend rule 441—54.3(249), introductory paragraph, as follows:

**441—54.3(249) Financial and statistical report.** All facilities wishing to participate in the program shall submit a Financial and Statistical Report, Form ~~AA-4036-0~~ 470-0030, to the department. The reports shall be based on the following rules.

ITEM 4. Amend subrule 54.3(3) as follows:

**54.3(3) Submission of reports.** The report shall be ~~submitted to~~ received by the ~~department of human services~~ Iowa Medicaid enterprise provider cost audit and rate setting unit no later than three months after the close of the facility’s established fiscal year. If the residential care facility is associated with a nursing facility, the cost report shall be due no later than five months after the close of the provider’s reporting year.

a. The financial and statistical report shall be submitted in an electronic format approved by the department.

b. The submission shall include a working trial balance that corresponds to all financial data contained on the cost report. The working trial balance must provide sufficient detail to enable the Iowa Medicaid enterprise provider cost audit and rate setting unit to reconcile accounts reported on the general ledger to those on the financial and statistical report. For reporting costs that are not directly assigned to the residential care facility in the working trial balance, an allocation method must be identified for each line, including the statistics used in the calculation. Reports submitted without a working trial balance shall be considered incomplete, and the facility shall be subject to the rate reductions set forth in paragraph 54.3(3) "d."

c. If the financial statements have been compiled, reviewed or audited by an outside firm, a copy of the compilation, review or audit, including notes, for the reporting period shall be included with the submission of the financial and statistical report.

d. Failure to timely submit the complete report within the three-month period shall reduce payment to 75 percent of the current rate.

(1) The reduced rate shall be effective the first day of the fourth month following the facility's fiscal year end and shall remain in effect until the first day of the month after the delinquent report is received by the Iowa Medicaid enterprise provider cost audit and rate setting unit.

(2) The reduced rate shall be paid for no longer than three months, after which time no further payments shall be made until the first day of the month after the delinquent report is received by the Iowa Medicaid enterprise provider cost audit and rate setting unit.

e. Amended reports. The department, in its sole discretion, may reopen a review of a financial and statistical report at any time. No other entity or person has the right to request that the department or its contractor reopen a review of a financial and statistical report, or submit an amended financial and statistical report for review by the department, after the facility is notified of its per diem payment rate following a review of a financial and statistical report.

f. When a residential care facility continues to include in the total costs an item or items which had in a prior period been removed through an adjustment made by the department or its contractor, the contractor shall recommend to the department that the per diem be reduced to 75 percent of the current payment rate for the entire quarter beginning the first day of the fourth month after the facility's fiscal year end. If the adjustment has been contested and is still in the appeals process, the facility may include the cost, but must include sufficient detail so the Iowa Medicaid enterprise provider cost audit and rate setting unit can determine if a similar adjustment is needed in the current period. The department may, after considering the seriousness of the offense, make the reduction.

g. Nothing in this subrule relieves a facility of its obligation to immediately inform the department that the facility has retained Medicaid funds to which the facility is not entitled as a result of any cost report process. A facility shall notify the Iowa Medicaid enterprise when the facility determines that funds have been incorrectly paid or when an overpayment has been detected.

ITEM 5. Amend subparagraph **54.3(11)"h"(1)** as follows:

(1) Compensation means the total benefit received by the owner or immediate relative for the services rendered to the facility. It includes salary amounts paid for managerial, administrative, professional, and other services; amounts paid by the facility for the personal benefit of the proprietor; the cost of assets and services which the proprietor receives from the facility; and deferred compensation. Compensation includes all remuneration, paid currently or accrued, for managerial, administrative, professional and other services rendered during the period. Compensation shall include all items that should be reflected on IRS Form W-2, Wage and Tax Statement, including, but not limited to, salaries, wages, and fringe benefits; the cost of assets and services received; and deferred compensation. Fringe benefits shall include, but are not limited to, costs of leave, employee insurance, pensions and unemployment plans. If the facility's fiscal year end does not correlate to the period of the W-2, a reconciliation between the latest issued W-2 and current compensation shall be required to be disclosed to the Iowa Medicaid enterprise provider cost audit and rate setting unit. Employer portions of payroll

taxes associated with amounts of compensation that exceed the maximum allowed compensation shall be considered unallowable for reimbursement. All compensation paid to related parties, including payroll taxes, shall be required to be reported to the Iowa Medicaid enterprise provider cost audit and rate setting unit with the submission of the financial and statistical report. If it is determined that there have been undisclosed related-party salaries, the cost report shall be determined to have been submitted incomplete and the facility shall be subject to the penalties set forth in paragraph 54.3(3) “d.”

ITEM 6. Adopt the following new subparagraph **54.3(11)“h”(5)**:

(5) The maximum allowed compensation for employees as set forth in subparagraph 54.3(11) “h”(4) shall be adjusted by the percentage of the average work week that the employee devoted to business activity at the residential care facility for the fiscal year of the financial and statistical report. The time devoted to the business shall be disclosed on the financial and statistical report and shall correspond to any amounts reported to the Medicare fiscal intermediary. If an owner’s or immediate relative’s time is allocated to the facility from another entity (e.g., home office), the compensation limit shall be adjusted by the percentage of total costs of the entity allocated to the facility. In no case shall the amount of salary for one employee allocated to multiple facilities be more than the maximum allowed compensation for that employee had the salary been allocated to only one facility.

ITEM 7. Rescind paragraph **54.3(11)“n”** and adopt the following new paragraph in lieu thereof:

*n.* Reasonable legal, accounting, consulting and other professional fees, including association dues, are allowable costs if the fees are directly related to patient care. Legal, accounting, consulting and other professional fees, including association dues, described by the following are not considered to be patient-related and therefore are not allowable expenses:

- (1) Any fees or portion of fees used or designated for lobbying.
- (2) Nonrefundable and unused retainers.
- (3) Fees paid by the facility for the benefit of employees.
- (4) Legal fees, expenses related to expert witnesses, accounting fees and other consulting fees incurred in an administrative or judicial proceeding. EXCEPTION: Facilities may report the reasonable costs incurred in an administrative or judicial proceeding if all of the following conditions are met. Recognition of any costs will be in the fiscal period when a final determination in the administrative or judicial proceeding is made.
  1. The costs have actually been incurred and paid,
  2. The costs are reasonable expenditures for the services obtained,
  3. The facility has made a good-faith effort to settle the disputed issue before the completion of the administrative or judicial proceeding, and
  4. The facility prevails on the disputed issue.

ITEM 8. Adopt the following new paragraphs **54.3(11)“o”** and **“p”**:

- o.* Penalties or fines imposed by federal or state agencies are not allowable expenses.
- p.* Penalties, fines or fees imposed for insufficient funds or delinquent payments are not allowable expenses.

ITEM 9. Amend subrule 54.8(1) as follows:

**54.8(1) *Audit of financial and statistical report.*** Authorized representatives of the department of human services or the Department of Health and Human Services shall have the right, upon proper identification, to audit, using generally accepted auditing procedures, the general financial records of a facility to determine if expenses reported on the Financial and Statistical Report, Form AA-4036-0 470-0030, are reasonable and proper according to the ~~rules~~ conditions set forth in rule 441—54.3(249). These audits may be done either on the basis of an on-site visit to the facility, ~~their~~ to the facility’s central accounting office, or office(s) to an office of their agent(s) the facility’s agent.

*a.* When a proper per diem rate cannot be determined, through generally accepted and customary auditing procedures, the auditor shall examine and adjust the report to arrive at what appears to be an acceptable rate and shall recommend to the department of human services that the indicated per diem be reduced to 75 percent of the established payment rate for the ensuing six-month period and if the

situation is not remedied on the subsequent Financial and Statistical Report, Form ~~AA-4036-0~~ 470-0030, the health facility shall be suspended and eventually canceled from the residential care facility program, or

*b.* No change.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/4/13.